

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

MAI HONG,)	No. 64041-1-I
)	
Respondent,)	
)	
v.)	
)	
JESSICA LA,)	UNPUBLISHED OPINION
)	
Appellant.)	FILED: June 14, 2010
)	

Ellington, J. — Following an altercation at their apartment building, Mai Hong obtained a one-year protection order against her former neighbor, Jessica La. On appeal, La argues that the trial court erred in entering the order because (1) she had previously moved out of her apartment, (2) there was no proof of misconduct, and (3) the order was too broad. Finding no error, we affirm.

BACKGROUND

Jessica La lived in an apartment directly underneath the apartment occupied by Mai Hong. On June 24, 2009, Hong sought and obtained a temporary antiharassment protection order prohibiting La from attempting to contact Hong or coming within 500 feet of Hong's residence or vehicle. On July 7, 2009, the temporary order was extended until the new court hearing date.

On July 21, 2009, the trial court reviewed Hong's petition and heard testimony from Hong and La. In the petition, Hong described the events that led her to seek a protection order. She stated that about two months earlier, La came to Hong's apartment, yelling and banging on the door. Hong opened the door and saw La holding a long wooden stick. La complained about the excessive noise made by Hong's footsteps, and Hong insisted that her footsteps were normal. They argued, and Hong told La not to come to her apartment again. Hong said that before La turned away, she "threatened me that she would do something to me"¹ if the noise did not stop.

Hong said that La returned to her apartment on the morning of June 19, 2009, holding a rolling pin and yelling and pointing in Hong's face. Hong told La to leave or she would call the police. La dared Hong to call the police and threatened to damage her car. She then ran to Hong's car and kicked it several times, causing damage. Hong confronted La, and La responded by kicking Hong and hitting her with the rolling pin. Hong called 911. La got into her car and tried to rear-end Hong's car. When Hong intervened, La got out of her car and continued yelling at Hong before driving away.

La presented a somewhat different view of events. La, who worked at night and slept during the day, testified that she was frequently bothered by the noise coming from Hong's apartment. La said she complained to the landlord several times about the noise, but to no avail. In April 2009, La knocked hard on Hong's door to complain about the noise, but Hong did not answer. In May 2009, La returned to Hong's

¹ Clerk's Papers at 3.

apartment and knocked on the door with a ruler. Hong opened the door and they argued. On June 21, 2009, La again knocked on Hong's door with a ruler to complain about the noise. Hong opened the door and they began arguing. La said that Hong stepped on her feet and pinched her repeatedly, so she defended herself by hitting Hong with the ruler. La said that as she was trying to leave, Hong kicked her. La then kicked Hong's car, and Hong damaged La's car. When La tried to leave, Hong stood in front of her car and yelled. La managed to drive away to get some lunch. When she returned a few minutes later, the police were there. No arrests were made, but the officer advised the parties to seek a protection order if necessary. La moved out of her apartment about a week later.

Following the hearing, the trial court issued a one-year protection order against La. The court noted that La had come up to Hong's apartment twice, both times brandishing a ruler and behaving aggressively, and that the second time, she assaulted Hong and damaged Hong's car. The order restrained La from keeping Hong under surveillance, contacting Hong, or coming within 500 feet of Hong's residence and vehicle. La appeals.

ANALYSIS

Mootness

La first argues that the trial court erred in entering the protection order because she had already moved out of her apartment, thereby mooting the need for an order. We disagree. "A case is considered moot if there is no longer a controversy between the parties, if the question is merely academic, or if a substantial question no longer

exists.”² Here, Hong specified in her petition that even though La had moved out, she was afraid that La might try to contact her or damage her car. If a court can still provide effective relief, a case is not moot.³

Sufficiency of the Evidence

Next, La argues that the trial court erred by granting the protection order because there was no proof of misconduct by La. When the petition sufficiently alleges harassment, a protective order will properly issue if the court finds by a preponderance of the evidence that unlawful harassment exists.⁴ The elements of unlawful harassment are “a knowing and willful course of conduct directed at such specific person which seriously alarms, annoys, harasses, or is detrimental to a person, and which serves no legitimate or lawful purpose.”⁵ “Course of conduct” means a pattern and series of acts “evidencing a continuity of purpose,” and includes either contact or conduct, but not constitutionally protected activity.⁶ The course of conduct must be such that it would cause a reasonable person to suffer substantial emotional distress, and shall actually cause substantial emotional distress to the petitioner or cause a reasonable parent to fear for the well-being of his or her child.⁷

² Hough v. Stockbridge, 113 Wn. App. 532, 536, 54 P.3d 192 (2002), rev'd in part on other grounds, 150 Wn. 2d 234, 76 P.3d 216 (2003).

³ Id. at 537.

⁴ RCW 10.14.080(3).

⁵ RCW 10.14.020(1); Burchell v. Thibault, 74 Wn. App. 517, 521, 874 P.2d 196 (1994).

⁶ RCW 10.14.020(2).

⁷ RCW 10.14.020(1); Burchell, 74 Wn. App. at 521.

First, La argues that there was insufficient evidence to support the court's oral ruling that she launched both incidents and acted as the first aggressor. She contends the evidence shows that the contact was initiated by Hong or was mutual. However, in a challenge to the sufficiency of the evidence, "[w]e view inferences in a light most favorable to the party that prevailed in the highest forum exercising factfinding authority."⁸ There is sufficient evidence to support the trial court's finding that La initiated the incidents.

Second, La argues that the court erred in entering the protection order because there was no notice of unwanted conduct prior to the June 19 incident. But Hong's petition stated that La had previously come to her apartment brandishing a ruler and threatening her, and that Hong told La not to come back. This constitutes sufficient notice.

Third, La argues that the record does not support a finding that she intended to alarm, harass, or annoy Hong, or that a reasonable person would consider the initial contact to be offensive. La asserts that her sole purpose in contacting Hong was to complain about noise, as was her right. But Hong's petition stated that during the initial contact La yelled, brandished a stick, and threatened Hong, and that during the second contact La kicked Hong's car and struck her. This conduct meets the statutory standard.

Fourth, La argues that she had a legitimate purpose in contacting Hong to

⁸ Woods v. Kittitas County, 162 Wn.2d 597, 617, 174 P.3d 25 (2007) (quoting Benchmark Land Co. v. City of Battle Ground, 146 Wn.2d 685, 694, 49 P.3d 860 (2002)).

ensure quiet enjoyment of her apartment and in defending herself against Hong's attack. However, although complaints against noise are legitimate, threats and aggressive behavior are not.

Fifth, La argues that there was no course of conduct between the parties to justify the order because she was never given notice that knocking on the door was unwanted and because there has been no contact between the parties since the June 19 incident. Again, this argument ignores the parties' prior contact during which La yelled, brandished the ruler and threatened Hong.

Scope of the Order

La argues that the trial court erred in granting relief beyond the nexus of the relationship between the parties and the particular harm sought to be abated. The scope of the court's order protecting the victim is reviewed for abuse of discretion.⁹ The court abuses its discretion only when its decision is manifestly unreasonable or is exercised on untenable grounds or for untenable reasons.¹⁰

La contends that the surveillance provision was improper because there was no evidence that she ever kept Hong under surveillance. But "[t]he statute grants broad discretion to the trial court in devising an order that protects the victim. The determination of how much is enough or is too much is a case-by-case determination."¹¹ The court did not abuse its discretion in addressing Hong's fear of

⁹ State v. Noah, 103 Wn. App. 29, 45, 9 P.3d 858 (2000).

¹⁰ State ex rel. Carroll v. Junker, 79 Wn.2d 12, 26, 482 P.2d 775 (1971).

¹¹ Noah, 103 Wn. App. at 43; RCW 10.14.080(6).

contact by restraining La from keeping Hong under surveillance. La further contends that the provision restricting her from coming within 500 feet of Hong's car was vague and overbroad because the court did not specify the type or location of the vehicle. But it can be inferred from the evidence in the record that La knows what Hong's car looks like. The scope of the order was not an abuse of discretion.

Affirmed.

Eleenfon, J.

WE CONCUR:

Leach, a.c.j.

Cox, J.